

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-431-2010  
vs. :  
:   
ELLEN THOMPSON, :  
Defendant :

**OPINION AND ORDER**

Before the Court is the Commonwealth's Motion for Termination of ARD. By way of background, Defendant was charged by Information filed on March 31, 2010 with one count of Simple Assault (physical menace), one count of Indecent Assault and one count of Harassment. Defendant was recommended for the ARD Program and by Order of Court dated April 26, 2010, Defendant was placed on the ARD Program.

Special conditions of ARD included the Defendant having no contact with the victim and compliance with all recommended treatment with respect to Defendant's alcohol problem.

Contrary to the aforesaid special conditions, within weeks after being placed on the Program, the Defendant began having frequent contact with the victim. Defendant admitted having contact with the victim and actually moving in with the victim. As a result, Defendant was given a written warning, instructed to stay at her mother's residence and again told have no contact whatsoever with the victim.

On June 2, 2010, when she reported to the Adult Probation Office, Defendant registered a .118% on a PBT. She admitted to drinking "whatever alcohol was left in the house" prior to "going to the Adult Probation Office." For this violation, she was given an additional 50 hours of community service. She was specifically told that any further

violations may result in the revocation of her ARD.

On June 16, 2010, Defendant was found at the victim's residence. She was in an intoxicated state. The PBT result was .198%. Defendant was directed to vacate the residence and report to the Adult Probation Office the next day. Apparently despite the admonitions from the Adult Probation Office, Defendant never left the victim's residence following June 2, 2010.

On June 17, 2010, Defendant reported to the Adult Probation Office as directed. A PBT was administered and registered a .052%. Defendant admitted to drinking after the APO officers left the prior day.

At the hearing in this matter, Defendant presented a letter from White Deer Run of Williamsport verifying that she was admitted to their program for alcohol abuse counseling beginning March 24, 2010. The letter also verified that she is attending individual therapy sessions one to two times a week. The letter further noted that she became involved with the AA Program, attends AA meetings regularly, has a sponsor and will be working the steps with her sponsor. The letter concludes that the Defendant is now committed to sobriety and the AA Program.

Defendant also submitted a letter authored by her noting that she has increased her efforts to address her alcohol problem "since June" and is taking the necessary steps to obtain "sobriety and success." The Court also received a letter from Defendant's sister verifying the Defendant's commitment to sobriety.

Defendant testified at the hearing. She indicated that she is addressing her

alcoholism, has a sponsor, attends AA and is working “the Program.” When pressed for specifics regarding what particular steps she recently took in working the Program, Defendant’s response was vague at best.

Following a Defendant’s placement on ARD, if a Judge finds that the Defendant has committed a violation of a condition of the Program, the Judge may order, when appropriate, that the Program be terminated and that the attorney for the Commonwealth proceed on the charges as provided by law. Pa. R.Cr.P. 318. Termination of a Defendant’s participation in the ARD Program is within the sound discretion of the Court. Commonwealth v. Lebo, 713 A.2d 1158, 1161 (Pa. Super. 1998), appeal denied, 737 A.2d 741 (Pa. 1999).

While the Court applauds the Defendant’s efforts at addressing her alcoholism and the other stressors in her life that either caused or were symptomatic of her alcoholism, under the circumstances, the Court cannot agree to keep the Defendant on the ARD Program. Clearly, the Defendant violated the terms and conditions of the Program by continuing to have contact with the victim and continuing to drink alcohol. Despite violating the conditions, the Defendant was provided an opportunity to remain on the Program while being only administratively sanctioned via a written warning and 50 additional hours of community service. The Defendant, however, continued to violate the terms and conditions of the Program, clearly accepting the risk that she would be terminated from the Program if caught.

The Court considers the Program to be advisable for those individuals who

commit criminal misconduct and who should not be burdened with a conviction under circumstances where if they comply with the conditions, they demonstrate rehabilitative success. The privilege of remaining on the ARD Program has been forfeited by the Defendant. She should no longer be entitled to the benefits of the Program. She has not demonstrated a commitment to rehabilitating herself by taking advantage of the benefits of the Program. Accordingly, the Commonwealth's Motion will be granted.

**ORDER**

**AND NOW**, this 30<sup>th</sup> day of July 2010 following a hearing, the Court **GRANTS** the Commonwealth's Motion to Terminate Defendant's ARD. The Commonwealth shall proceed on the charges as provided by law. Defendant is directed to appear for a status conference on **November 23, 2010 at 9:00 a.m. in Courtroom No. 1** of the Lycoming County Courthouse.

By The Court,

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Marc F. Lovecchio, Judge

cc: CA; CC; APO  
Eric Linhardt, District Attorney  
Kyle Rude, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work File